FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 476/2007
(Sk. Gaffar Sk. Kadar & another **VERSUS** Rajkumar Ramchandra Kotwani & 2 others **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. Modak, counsel for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 28th September, 2007.

Heard the learned counsel for the appellant.

The appellants are the original defendant nos.2 and 3. The plaintiffs had filed a suit for mandatory injunction directing the defendant nos.2 and 3 to demolish the construction made by them on the western side of the plaintiffs' shop so as to keep the drainage open and for perpetual injunction restraining the defendants from making any construction on the suit site. According to the plaintiffs, the defendants had encroached upon the lane and drainage. It was then pleaded by the plaintiff that the construction made by the defendant nos.2 and 3 caused great inconvenience and annoyance to the plaintiffs, and therefore, they had reason to institute the suit against the defendants.

The defendant nos.2 and 3 filed their written statement and denied that there was a

lane on the western side of the plot of the plaintiffs. The existence of the drainage prior to the making of the construction by the defendants was also denied. It was pleaded by the defendants that there were several shops in the suit lane and the drainage was not visible. The defendants, therefore, pleaded that the suit of the plaintiff should be dismissed.

The trial Court, on an appreciation of the evidence tendered by the parties on record, held that the plaintiffs had proved that the defendant nos.2 and 3 had encroached on the lane and had raised the construction illegally on the western side of the plaintiffs' shop by the letters AEFI. The trial Court then held that due to the construction raised by the defendant nos. 2 and 3, waste water stagnated on the western side of the shop of the plaintiffs' thereby causing annoyance and inconvenience to the plaintiffs. The Court, therefore granted mandatory and permanent injunction in favour of the plaintiffs.

The decree passed by the trial Court was upheld in an appeal filed by the defendant nos.2 and 3. The Courts heavily relied on the admission of the defendant that there existed a lane and drain in between the properties of the plaintiffs and the defendants and the construction was made on the drain. It was also

admitted by the defendant Sk.Gafar, that the water from the drainage used to flow from the southern side.

On a proper appreciation of the evidence on record, the Courts recorded a finding that the plaintiffs had proved that the defendants had encroached on the lane by making a construction thereon and the said construction resulted in water stagnation on the western side of the shop of the plaintiffs.

The findings recorded by both the Courts are pure findings of fact which do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

APTE